THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.723 OF 2007

DATED 26-02-2007

Between:

Ramalakshmamma.

…**Petitioner**

And

Govt of Andhra Pradesh, rep. by Secretary,
Finance & Planning (FW Pen-I) Dept,
Secretariat, Hyderabad.

…**Respondent**

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AND
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WRIT PETITION NO.723 OF 2007

O R D E R *(Per the Hon'ble Sri Justice Bilal Nazki):*

The writ petitioner was appointed as a contingent Masalchi in Munsif Magistrate's Court, Wanapathy on 01-06-1979. By Order No.73/94/Admn, dated 20-06-1994, her services were converted into last grade services in terms of certain Government Orders, particularly, G.O.Ms.No.38 Finance and Planning (FW PRC VI) Department, dated 01-02-1980 and G.O.Ms.No.9 Finance and Planning (FW PRC VI) Department, dated 08-01-1981. After regularization of the service of the petitioner in the year 1994, she retired voluntarily with effect from 01-09-1998. Thereafter, the petitioner applied for pension, but, she was denied of the same. The second respondent-District Judge, Mahabubnagar, wrote a letter to the District Audit Officer of State Audit, Local Fund, Mahaboobnagar on 24th January, 2001 which was replied by the District Audit Officer *vide* his letter

dated 23-02-2001, stating that,

> 'Since Smt.Ramalaxamma, was not converted in terms of the above GOs, it is opined that the services of the retired employee for the period from 01-06-1979 to 17-06-1973 cannot be taken into account for the purpose of calculation of pensionary benefits.
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> Further, I am to inform that Smt.Ramalaxamma, is not eligible for pension, as she has not put in a qualifying service of ten years. However, she is eligible for gratuity for the service put in by her from 18-06-1993 to 01-09-1998.'

So, the petitioner's request for grant of pension was rejected on the ground that she had no qualifying service of 10 years and her service from 18-06-1993 to 01-09-1998 was only taken into consideration and she was paid gratuity from 18-06-1993 caliculating it on the basis of her service with effect from 18-06-1993 to 01-09-1998.

The petitioner's case is that in terms of G.O.Ms.No.156, Finance & Planning (FW Pen-I) Department, dated 29-04-1983, service put in by her from 01-06-1979 to 17-06-1993 had to be taken into consideration for the purpose of pension and if this service is taken into consideration, her service is more than the qualifying service of 10 years.

So the bone of contention is G.O.Ms.No.156, Finance & Planning (FW Pen-I) Department, dated 29-04-1983, which reads as under:

'**ORDER**:

According to the orders issued through the reference 1st and 2nd read above full time contingent posts which are created by competent authorities and which have been in existence for a period of five years as on 01-04-1981 and which are required permanently have been permitted to be converted into regular Government posts in the last Grade Services, which accrue to a regular last grade government employee.

2. Under the existing rules, if the contingent employees who are appointed against posts converted into last grade post do not put in sufficient service is last grade employees to earn pension under the applicable pension rules by the time they retire, due while in-service, they are eligible only for gratuity under the Andhra Pradesh retiring & Invalid gratuities (Non pensionable Establishment) Rules, 1941, for the service put in as full time contingent employment make together. In case an employee puts in a service of ten years or more under Government in the regular last grade post he shall be eligible for pension only for his regular service under Government. The pre-absorption service of full time contingent employees is not countable for purposes of pension under Art 361-a C.R.S. as they are paid consolidated pay as fixed from time to time and the service is non-pensionable.

3. As full time contingent

> employees are low paid employees and as it should be hard ship to these employees if the benefit of their past service is not reckoned for purposes of pension and also as a social security measure, Government have decided after careful consideration and accordingly hereby order that to the pre absorbed in Government service against posts of full time contingent employees converted in to last grade posts, in accordance with the orders issued in the G.Os 1st and 2 read above, be counted for purposes of pension in combination with subsequent government service in relaxation of Art 361 of C.Srs.
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> 4. These orders shall come into effect w.e.f. 01-04-1981.'

In the counter-affidavit filed on behalf of the first respondent, the District Audit Officer, Mahabubnagar, has taken a plea that according to G.O.Ms.No.156, dated 29-04-1983, the cut off date is 01-04-1981 and only the persons, whose services had been regularized on
01-04-1981, were entitled to the benefit under G.O.Ms.No.156, dated 29-04-1983.

This interpretation of G.O.Ms.No.156, dated 29-04-1983 is misplaced. We fail to understand how such an interpretation could be placed of G.O.Ms.No.156. The purpose of issuing this GO is mentioned in Para 3 of the GO itself. This GO was,

in fact, issued for the purpose of helping those persons, whose services had been regularized after being in service for a long time and

01-04-1981 was the date of reference as far as the availability of existence of a post was concerned.

G.O.Ms.Nos.9 and 38 were issued on the premise that certain posts had been in existence for a particular period of time. G.O.Ms.No.156 has reference to G.O.Ms.Nos.38 and 9 and in the first paragraph of G.O.Ms.No.156, one can see clearly that the reference to the date '01-04-1981' was in the context of existence of a post for a period of five years before that date. So, if a post was in existence on 01-04-1981, G.O.Ms.No.156 would apply. It never meant that a person should have been regularized on 01-04-1981 or before that date to get the benefit of the pension under G.O.Ms.No.156. Similarly, in the last para of the G.O.Ms.No.156, the Government had stated that this order shall come into effect *w.e.f.*, 01-04-1981. Although this GO was issued in 1983, but it had been given a retrospective effect from 01-04-1981. By no stretch of imagination, it could be imagined that this GO would only apply to those persons, whose services had been regularized by 01-04-1981. What it all meant was that the post should

have been in existence for a period of five years as on 01-04-1981. Since the services of the petitioner were regularized in the year 1994, it would be clear that she had been regularized only because the post was in existence for a period of five years prior to 01-04-1981 and as such, she got the benefit of regularization in terms of G.O.Ms.Nos.9 and 38.

For these reasons, we allow the Writ Petition and direct the respondent-authorities to take the petitioner's service from 01-06-1979 to 18-06-1993 into consideration along with the service from 18-06-1993 to 01-09-1998 for the purpose of calculation of her pension. The necessary orders shall be passed within a period of four weeks from today and the arrears of pension shall be paid to the petitioner within a period of six weeks from today.

A prayer for grant of interest on the pension was also made by the petitioner. The pension has been denied to the petitioner on a bonafide mistake in understanding the law, and as such, we do not think that it is an appropriate case, in which, interest can be ordered.

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(Bilal Nazki, J)

Dated 26th February, 2007

(Nooty
Ramamohana Rao, J)

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